IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ARTHUR L. HAIRSTON, SR., Plaintiff, v. CHARLES SAMUELS, Defendant.	HON. JEROME B. SIMANDLE Civil No. 06-4894 (JBS) **OPINION**

APPEARANCES:

Mr. Arthur L. Hairston, Sr.
#03705-087
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Plaintiff pro se

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SIMANDLE, District Judge:

Plaintiff Arthur L. Hairston, Sr. ("Plaintiff" or "Mr. Hairston"), an inmate at the Federal Correctional Institution at Fort Dix, New Jersey ("F.C.I. Fort Dix"), brings this action pursuant to 28 U.S.C. § 1331 and under the authority of Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971), for civil damages against the defendant, Charles

Samuels ("Defendant" or "Mr. Samuels"), the former warden of F.C.I. Fort Dix. Plaintiff alleges that the Defendant violated his First Amendment rights to privacy and to petition the courts for legal redress by instituting a policy at F.C.I. Fort Dix that required all inmates to turn over outgoing special mail[1] to a unit team member for further processing. Presently before the Court is Defendant's motion to dismiss and/or for summary judgment [Docket Item 25]. For the following reasons, the Court will grant Defendant's motion for summary judgment.

I. BACKGROUND

A. Facts

At issue in this case is the procedure for collection of special mail from inmates put into place by the Defendant in his capacity as warden of F.C.I. Fort Dix. (Am. Compl. ¶ 3(3).)

On February 16, 2006, the Defendant issued a memorandum to his staff and inmates at F.C.I. Fort Dix eliminating the "special mail drop-box" and establishing a procedure whereby "all special mail for general population inmates must be hand delivered to a unit team staff member for further processing." (Decl. of J. Andrew Ruymann, Ex. 2.) This memo was issued in response to a

[1] "Special mail" is defined under the applicable federal regulations as general correspondence from a prisoner to a government entity, including to "U.S. Attorneys Offices . . . U.S. Courts" and "Members of the U.S. Congress." 28 C.F.R. § 540.2(c). All legal mail (i.e. correspondence between a prisoner and his own attorney) is handled in the same manner as special mail. Id. § 540.19(b).

February 1, 2006 memorandum from John M. Vanyun, Assistant Director of the Correctional Programs Division for the Federal Bureau of Prisons, to the regional directors of the Bureau. (Id. at Ex. 3.) The memo from Mr. Vanyun mandated the same procedures that the Mr. Samuels set forth in his later memo. (Id.) Mr. Vanyun's memo simply elaborated on the details and reasons for the procedures. (Id.) As a result of the procedures established by Mr. Samuels' memo, the special mail box was removed from the premises at F.C.I. Fort Dix and all prisoners were required to submit their special mail to unit team personnel. (Am. Compl. ¶ 3(3).)

According to the Amended Complaint, the policy promulgated by the Defendant requires the Plaintiff to wait until 3:30 p.m. every day to hand over any special mail to the unit team leaders, a restriction that the Plaintiff has characterized as "a nightmare and very challenging." (Id.) According to Mr. Hairston, this restriction has caused him to feel that he "doesn't even want to deal with the unreasonable situation of having to wait until 3:30 throughout the week to mail properly marked legal mail, special inmates grievances through a partial [u]nit [t]eam." (Id. ¶ 3(6).)

Plaintiff states that the policy described above varies to a great degree from the previous policy in existence at F.C.I. Fort Dix and throughout the Federal Bureau of Prisons ("B.O.P.") of

allowing inmates to place special mail at any time of day in a separate mailbox specifically set up for that purpose. (Id. ¶ 3(3).) The Plaintiff urges that this previous policy allowed inmates to "drop properly marked legal mail in the [b]ox and not have to be subjected to the unit team[']s unprofessional conduct." (Id.)

B. Procedural History

Plaintiff filed a Complaint in the instant case on October 12, 2006 and filed an Amended Complaint on July 11, 2007 [Docket Item 7]. The Plaintiff did not complete service on the United States as required under Rule 4(i) of the Federal Rules of Civil Procedure until January 2, 2008 [Docket Item 18]. The Defendant filed the motion at issue in this case in lieu of an Answer, to the merits of which the Court now turns[2] [Docket Item 25].

II. DISCUSSION

A. Standard of Review

Summary judgment is appropriate when the materials of record "show that there is no genuine issue as to any material fact and

[2] Allegations by Mr. Hairston that the Defendant did not timely file this motion are without merit [Docket Item 26, ¶ 3]. Under Local Rule 6.1(b), the Defendant received an automatic fifteen-day extension of the deadline to answer the Amended Complaint from the Clerk of the Court on March 3, 2008, the last day of the sixty-day response period mandated by Rule 12(a)(2) and calculated under Rule 6(a) of the Federal Rules of Civil Procedure [Docket Item 24]. Exactly fifteen days later, on March 18, 2008, the Defendant filed his motion to dismiss or for summary judgment [Docket Item 25].

that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). In deciding whether there is a disputed issue of material fact, the court must view the evidence in favor of the non-moving party by extending any reasonable favorable inference to that party; in other words, "the nonmoving party's evidence 'is to be believed, and all justifiable inferences are to be drawn in [that party's] favor.'" Hunt v. Cromartie, 526 U.S. 541, 552 (1999) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986)). The threshold inquiry is whether there are "any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." Liberty Lobby, 477 U.S. at 250; Brewer v. Quaker State Oil Refining Corp., 72 F.3d 326, 329-30 (3d Cir. 1995) (citation omitted).

Although entitled to the benefit of all justifiable inferences from the evidence, "the nonmoving party may not, in the face of a showing of a lack of a genuine issue, withstand summary judgment by resting on mere allegations or denials in the pleadings; rather, that party must set forth 'specific facts showing that there is a genuine issue for trial,' else summary judgment, 'if appropriate,' will be entered." United States v. Premises Known as 717 South Woodward Street, Allentown, Pa., 2 F.3d 529, 533 (3d Cir. 1993) (quoting Fed. R. Civ. P. 56(e)) (citations omitted). As the Supreme Court has explained,

> Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial.

Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986) (internal quotations and citations omitted).

B. Analysis

Under Third Circuit precedent, a violation of an individual's First Amendment rights by a federal officer gives rise to the same private civil action for damages as allowed by the Supreme Court for a violation of Fourth Amendment rights by a federal officer. Paton v. LaPrade, 524 F.2d 862, 869-70 (3d Cir. 1975) (extending a Bivens action to include violations of the First Amendment). As a result, the current case, in which the Plaintiff argues a violation of his First Amendment right to freedom of speech and to petition the court for redress of grievances, will be analyzed under the same framework as established in Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971), including the application of the Defendant's claim of qualified immunity from suit.

The Defendant has moved in this case for dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure or in the alternative for summary judgment as a matter of law under Rule

56(c) of the Federal Rules of Civil Procedure [Docket Item 25]. As set forth more fully below, the Court now grants the Defendant's motion for summary judgment on the basis of qualified immunity.

1. Qualified Immunity Standard

Qualified immunity is a threshold issue that could result in immunity from suit and thus should be undertaken at the earliest possible point in the proceedings. As the Third Circuit has recognized, "the Supreme Court has instructed that '[i]mmunity ordinarily should be decided by the court long before trial.'" Curly v. Klem, 499 F.3d 199, 208 (3d Cir. 2007)(quoting Hunter v. Bryant, 502 U.S. 224, 228 (1991)). As an "accommodation of competing values," qualified immunity strikes a balance by permitting a plaintiff to recover for constitutional violations where the defendant officer was "plainly incompetent or . . . knowingly violate[d] the law," while immunizing an officer who "made a reasonable mistake about the legal constraints on his actions." Curley, 499 F.3d at 206-07 (internal quotations and citations omitted).

In Saucier v. Katz, 533 U.S. 194 (2001), the Supreme Court described the two-step inquiry courts undertake in determining whether a governmental officer is entitled to qualified immunity. First, the Court must address whether "the officer's conduct violated a constitutional right." Id. at 201. As the Court of

Appeals noted in Curley, this is "not a question of immunity at all, but is instead the underlying question of whether there is even a wrong to be addressed in an analysis of immunity." Curley, 499 F.3d at 207. If in this first step the Court finds that there was no constitutional violation, "there is no necessity for further inquiries concerning qualified immunity." Saucier, 533 U.S. at 201.

"'If, and only if, the court finds a violation of a constitutional right,' the court moves to the second step of the analysis and asks whether immunity should nevertheless shield the officer from liability." Curley, 499 F.3d at 207 (quoting Scott v. Harris, 550 U.S. 372, 127 S.Ct. 1769, 1774 (2007)). The inquiry under this second step addresses whether "the right was clearly established." Saucier, 533 U.S. at 201. The analysis of whether the right was clearly established "must be undertaken in light of the specific context of the case, not as a broad general proposition," in order to assess "whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." Id. at 201-02.

2. Analysis of Constitutional Rights

The Court first addresses "whether the officer's conduct violated a constitutional right." Saucier, 533 U.S. at 201. The First Amendment to the United States Constitution states that "Congress shall make no law . . . abridging the freedom of speech

or . . . the right of the people . . . to petition the Government for redress of grievances." U.S. Const. amend. I. The Supreme Court has recognized that the First Amendment provides a related right for "access of prisoners to the courts for the purpose of presenting their complaints." Johnson v. Avery, 393 U.S. 483, 485 (1969). This right of access "must be 'adquate, effective and meaningful,' and must be freely exercisable without hinderance or fear of retaliation." Milhouse v. Carlson, 652 F.2d 371, 374 (3d Cir. 1981) (quoting Bounds v. Smith, 430 U.S. 817, 822 (1977)) (internal citation omitted).

The Supreme Court developed a two-prong test for determining if a policy censoring the outgoing mail of a prisoner at a particular institution violates the First Amendment guarantee in Procunier v. Martinez, 416 U.S. 396, 413 (1974). See also Thornburgh v. Abbott, 490 U.S. 401, 413 (1989) (limiting the test in Martinez only to outgoing prisoner mail). In Martinez, the Supreme Court ruled that any censorship of outgoing inmate correspondence will only be allowed if it "further[s] an important or substantial government interest unrelated to the suppression of expression" and is "no greater than is necessary or essential to the protection of the particular government interest involved." Martinez, 416 U.S. at 413. However, the Supreme Court has also required that prison officials "be accorded wide-ranging deference in the adoption and execution of

policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." Bell v. Wolfish, 441 U.S. 520, 547 (1979). In relating Martinez to the series of cases that includes Bell, the Supreme Court has indicated that:

> prison officials may well conclude that certain proposed interactions, though seemingly innocuous to laymen, have potentially significant implications for the order and security of the prison. Acknowledging the expertise of these officials and that the judiciary is "ill equipped" to deal with the difficult and delicate problems of prison management, this Court has afforded considerable deference to the determinations of prison administrators who, in the interest of security, regulate the relations between prisoners and the outside world.

Thornburgh, 490 U.S. at 407-08.

In this case, the procedures put into place by Mr. Samuels at F.C.I. Fort Dix were based on a memo from John M. Vanyun mandating that all institutions within the B.O.P. eliminate special mail "drop-boxes" and establish procedures for unit staff to collect special mail from inmates. (Decl. of J. Andrew Ruymann, Ex. 3.) In that memo, Mr. Vanyun details the reason for the change in policy as "promptly reduc[ing] the likelihood that inmates will successfully send harmful materials to persons in the community by exploiting the privacy afforded outgoing special mail." (Id.) The procedures established by the memo require confirming "that the inmate delivering [the special mail item] is the same inmate reflected in the return address" and electronically scanning the items "for the sole purpose of

identifying harmful materials." (Id.)

The memo states that "the private nature of outgoing special mail communication will not be compromised." (Id.) To that end, Mr. Vanyun's procedures allow that "[i]nmates may still seal their outgoing special mail before submitting directly to staff for further processing" and that electronic scanning "cannot be used to read or review the content of outgoing special mail communication." (Id.) The memo further establishes that special mail confiscated because of the presence of harmful materials or because of an incorrect return address, "should not be read by staff, and . . . [w]henever possible . . . should be returned to the inmate for re-sending." (Id.)

Defendant's memo was not as detailed as Mr. Vanyun's, but it had similar content. (Decl. of J. Andrew Ruymann, Ex. 2.) The procedures established by Mr. Samuels eliminated the special mail drop-box and required inmates to deliver such items to a unit team staff member. (Id.) Mr. Samuels also noted that any special mail delivered to unit staff "without [an] accurate return address will not be further processed and will be immediately returned." (Id.) Finally, Mr. Samuels stated that if an inmate attempts to send special mail under another inmate's return address or if the electronic scan of special mail confirms the presence of "harmful contraband" then the "inmate may face disciplinary action or criminal charges." (Id.)

These procedures clearly meet the test as established in Martinez.[3] In that decision the Supreme Court detailed the possible substantial government interests that could excuse censorship of outgoing prisoner mail as, "security, order and rehabilitation." Martinez 416 U.S. at 413. The Supreme Court in exploring the boundaries of Martinez has indicated that "[d]angerous outgoing correspondence is more likely to fall within readily identifiable categories: examples ... include escape plans, plans relating to ongoing criminal activity, and threats of blackmail or extortion." Thornburgh, 490 U.S. at 412. The Third Circuit expanded upon this ruling by noting that, "[a]dded to these risks are the possibility that such mail could

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[3] Mr. Hairston alleges in his Amended Complaint that the Defendant's policy of requiring all inmates to deliver special mail to unit team personnel has resulted in him being taunted by prison staff with questions about the content of his outgoing special mail. (Amend. Compl. at ¶ 3(3).) He has indicated that these statements, along with a perceived conflict of interest by unit team personnel handling special mail correspondence containing inmate grievances, has resulted in Plaintiff "not wanting to even take properly marked mail to the same [u]nit [s]taff where there is a conflict of interest." (Id. ¶ 3(4).)

These allegations target the actions of officers who are not defendants in the current case. Nothing in the allegations suggest any personal involvement by Mr. Samuels in the actions of those officers. Nor has the Plaintiff adduced any evidence of the Defendant's personal involvement in the actions of the officers. Neither can the Defendant be held responsible for the actions of these unnamed officers under a theory of respondeat superior liability. See, e.g., Ruiz Rivera v. Riley, 209 F.3d 24, 28 (1st Cir. 2000) (citing cases from Circuit Courts holding that respondeat superior is not a viable theory of Bivens liability). See also Huberty v. U.S. Ambassador to Costa Rica, No. 07-4330, 2008 WL 3864073 at *1 (3d Cir. 2008).

be used to facilitate the introduction of contraband into the prison, or the conducting of a business prohibited by prison regulations. The specific threats to security identified by Thornburgh constitute an important and substantial government interest." Nasir v. Morgan, 350 F.3d 366, 374 (3d Cir. 2003).

The stated intent of the newly established procedures is to prevent inmates from using the confidentiality of special mail to send harmful materials to members of the community. This interest in preventing inmates from sending harmful correspondence has been recognized as an important government interest under Martinez. See, e.g., Witherow v. Paff, 52 F.3d 264, 266 (9th Cir. 1995) (per curiam) ("Preventing prisoners from disseminating offensive or harmful materials clearly advances the orderly administration of prisons, the rehabilitation of prisoners, and the security of those receiving the materials."); Johnson v. Pacholski, No. 07-633, 2007 WL 1751745 at *9 (D.N.J. June 14, 2007)("Prison officials have 'broad discretion' in monitoring inmate correspondence to ensure that the inmates are not 'passing contraband' or 'making clearly inappropriate comments, which may be expected to circulate among prisoners.'") (quoting Shaw v. Murphy, 532 U.S. 223, 231 (2001)).

Additionally, the method by which the B.O.P. has decided to enforce this important government objective (i.e. allowing unit staff members to confirm the return addresses of correspondence

and mandating the electronic scanning of sealed mail items for harmful materials) is minimally intrusive to the privacy afforded the inmate. In fact, under these procedures, staff members are prohibited from reading the contents of any special mail and nearly every refusal to process special mail results not in a censorship of the mail but in a return of that mail to the inmate to allow him to comply with the regulations and re-send it. See Wolff v. McDowell, 418 U.S. 539, 576 (1974) (finding that "freedom from censorship is not equivalent to freedom from inspection or perusal"); Altizer v. Deeds, 191 F.3d 540, 548 (4th Cir. 1999) ("Martinez . . . involved the 'censorship' of inmate mail, not the 'inspection' of inmate mail."); Witherow, 52 F.3d at 265-66. (finding no First Amendment violation where a Nevada state prison regulation required unit staff to examine unsealed outgoing special mail and confirm the return address of the inmate before the inmate is allowed to seal and send that mail).

It bears noting that the mail policy at issue in this case is less restrictive and more narrowly tailored than the policies that courts have upheld as being consistent with the First Amendment and Martinez. For example, the policy upheld by the Ninth Circuit in Witherow required that a letter to a public official be presented to the unit officer unsealed so that officer might examine the contents of the envelope, check the validity of the return address and then return it to the inmate

to be sealed and sent. Witherow, 52 F.3d at 266. Mr. Samuels' policy achieves the same result, but by allowing the inmate to seal the envelope before handing it over to the unit officer and only requiring the letter to be electronically scanned for harmful materials, it completely removes the potential that a unit officer might improperly read the contents of the letter; the policy herein thus gives the inmate an even greater amount of privacy in his mail than the policy upheld in Witherow did.

Similarly, the policy approved by the Fourth Circuit in Altizer allowed a warden to require the opening and inspection of all outgoing mail from inmates.[4] The Fourth Circuit drew the distinction between inspecting the mail for removal of dangerous material and censoring the mail. The court there indicated that opening and inspecting mail does not rise to the level of constitutional violation that would even require a Martinez-type analysis. Altizer, 191 F.3d at 547-48. Unlike the mail policy in that case, the policy advanced by Mr. Samuels did not require the opening and inspection of all outgoing mail. Instead, as noted above, the policy simply required the unit staff to make a cursory examination of the return address on an already sealed

[4] The court in Altizer approved this policy for all pieces of outgoing inmate mail except for communications with an inmate's attorney. Such communications, according to the court, raise the specter of the Sixth Amendment right to counsel and were not at issue in the case as presented. Altizer, 191 F.3d at 549 n.14.

envelope to confirm its accuracy and to electronically scan the envelope for dangerous items. This policy furthers the Government's substantial interest in preventing inmates from sending harmful materials through the mail, and it is narrowly tailored to the furtherance of this interest.

As the procedures established by the B.O.P. and instituted by Mr. Samuels clearly meet the requirements for censorship of outgoing mail established by the Supreme Court in Martinez, they cannot be seen as a violation of the Plaintiff's First Amendment right to access to the courts. Thus on the first prong of the Saucier test for qualified immunity, which addresses whether the actions of the Defendant violated the Plaintiff's constitutional rights, this Court finds that they did not. The Court having determined that the Defendant did not violate Plaintiff's constitutional rights, "there is no necessity for further inquiries concerning qualified immunity." Saucier, 533 U.S. at 201.[5] The Court accordingly finds that the Defendant is entitled

[5] The Court notes, however, that even if the Defendant's policy were found to constitute a violation of the Plaintiff's First Amendment rights, the Defendant would still be entitled to qualified immunity, because it would not be "clear to a reasonable officer that his conduct was unlawful in the situation he confronted." Saucier, 533 U.S. at 201-02.

Three sources of law reinforce the reasonableness of Mr. Samuels' belief that the policy he implemented was lawful. First, the Supreme Court has shown great deference to the decisions of prison directors on the day-to-day policies of prison management in regard to security. Thornburgh, 490 U.S. at 407-08; Bell, 441 U.S. at 547. Second, the Third Circuit has evinced a concern with the use of the mail by prisoners to send

to qualified immunity and will enter summary judgment for the Defendant in this case.

III. CONCLUSION

For the reasons discussed above, the Court will grant the Defendant's motion for summary judgment. The accompanying Order will be entered.

December 4, 2008
Date

s/ Jerome B. Simandle
JEROME B. SIMANDLE
United States District Judge

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and receive contraband that could rise to the level of requiring censorship of outgoing special mail. Nasir, 350 F.3d at 374. Finally, in the absence of any direct Third Circuit determination of the constitutionality of the procedures at issue here, the Ninth and Fourth Circuits provide persuasive authority by approving even more intrusive outgoing mail policies than the policy implemented by Mr. Samuels. Witherow, 52 F.3d at 266 (Ninth Circuit determined that, prior to inspection, special mail should not be sealed by the inmate); Altizer, 191 F.3d at 547-48 (Fourth Circuit, differentiating between censorship and inspection, permitted all outgoing non-legal mail from inmates to be opened and searched for contraband). Given this backdrop, a reasonable warden in Mr. Samuels' position would believe that the policy set forth in Mr. Vanyun's memo did not violate the First Amendment rights of inmates and therefore Mr. Samuels would be entitled to qualified immunity even in the face of a constitutional violation.